

No. 12427

United States
Court of Appeals
for the Ninth Circuit.

COMMODITY CREDIT CORPORATION,
Appellant,

vs.

PETALUMA AND SANTA ROSA RAILROAD
COMPANY, a corporation,
Appellee.

Transcript of Record

Appeal from the United States District Court,
Northern District of California,
Southern Division.

FILED

MAR 18 1950

PAUL P. O'BRIEN,
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

FRANK J. HENNESSY,

United States Attorney,
Northern District of California,
Post Office Building,
San Francisco, California,

Attorney for Defendant and Appellant.

A. T. SUTER,

65 Market Street,
San Francisco, California,

Attorney for Plaintiff and Appellee.

In the Municipal Court of the City and County
of San Francisco, State of California

No. 205597

PETALUMA AND SANTA ROSA RAILROAD
COMPANY, a corporation,

Plaintiff,

vs.

COMMODITY CREDIT CORPORATION, a cor-
poration, POULTRY PRODUCERS OF CEN-
TRAL CALIFORNIA, a corporation, DOE
ONE, DOE TWO, DOE THREE,

Defendants.

CERTIFICATE OF CLERK OF MUNICIPAL
COURT ON REMOVAL

I, Ivan L. Slavich, Clerk of the Municipal Court of the City and County of San Francisco, State of California, in and for said City and County, do hereby certify that I have compared the annexed and foregoing copy of Complaint, Petition of Defendant, Commodity Credit Corporation, a corporation, for Removal of said cause to the United States District Court in and for the Northern District of California, Southern Division, Bond for Removal on behalf of said Commodity Credit Corporation; also of Notice of Petition for Removal (with copy of Petition and Bond for Removal attached), and Order for Removal, in the case of Petaluma and Santa Rosa Railroad Company, a corporation,

Plaintiff, v. Commodity Credit Corporation, a corporation, Poultry Producers of Central California, a corporation, Doe One, Doe Two, Doe Three, Defendants, Cause No. 205597, constituting the record in said cause, with the originals now on file in my office, and that said annexed and foregoing copies are true and correct transcripts thereof and of the whole of said originals.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said Court, this 8th day of April, 1948.

April 8, 1948.

IVAN L. SLAVICH,
Clerk.

[Seal] By /s/ A. C. McCHESNEY,
Chief Deputy.

[Endorsed]: Filed April 22, 1948.

[Title of Municipal Court and Cause.]

COMPLAINT FOR FREIGHT CHARGES

Plaintiff complains of defendants, and for cause of action alleges:

I.

That plaintiff is now, and at all times herein mentioned was, a corporation organized and existing under and by virtue of the laws of the State of California, with its principal place of business in the City and County of San Francisco.

II.

That defendant Commodity Credit Corporation is now, and at all times herein mentioned was, a corporation organized and existing under and by virtue of the laws of the State of Delaware and doing business in the State of California.

III.

That defendant Poultry Producers, of Central California, is now, and at all times herein mentioned was, a corporation organized and existing under and by virtue of the laws of the State of California, with its principal place of business in the City and County of San Francisco.

IV.

That plaintiff is not aware of the true names or capacities, whether individual, corporate, associate or otherwise, of defendants Doe One, Doe Two, Doe Three, and, therefore, sues said defendants by such fictitious names, and leave of Court will be asked to amend this complaint to show their true names and capacities when the same have been ascertained.

V.

That within two years last past defendants, and each of them, became, and now are, indebted to plaintiff in the sum of \$1,954.14, as and for undercharges on eight carload shipments of bulk wheat transported by plaintiff and its connecting carriers and delivered by plaintiff at Petaluma, California, to defendant Poultry Producers of Central Califor-

nia; that the consignor of said shipments was defendant Commodity Credit Corporation; that the details of said shipments are set forth on three statements attached hereto, made a part hereof, and marked "Exhibit A," "Exhibit B" and "Exhibit C"; that the transportation charges due on account of the transportation of said shipments, in accordance with and pursuant to the tariffs of plaintiff and its connecting carriers at all times herein mentioned duly posted, published and on file with the Interstate Commerce Commission were \$9,398.82, no part of which has been paid except the sum of \$7,444.68; that plaintiff has duly performed each and every act on its part to be performed; that although demand has been made upon defendants and each of them for said charges, payment has been refused, and there is now due, owing and unpaid from the defendants, and each of them, to the plaintiff herein, the sum of \$1,954.14.

Wherefore, plaintiff demands judgment against defendants and each of them for the sum of \$1,954.14, together with interest thereon, and for its costs, and for such other and further relief as to the Court may seem just and proper.

A. T. SUTER,

E. L. VAN DELLEN,

Attorneys for Plaintiff.

State of California,
City and County of San Francisco—ss.

Roy G. Hillebrand, being first duly sworn, deposes and says:

That he is an officer, to-wit, Secretary of Petaluma and Santa Rosa Railroad Company, the plaintiff in the above-entitled action, and makes this verification for and on behalf of said plaintiff; that he has read the foregoing Complaint and knows the contents thereof; that the same is true of his own knowledge, except as to the matters which are therein stated on information or belief, and as to those matters that he believes it to be true.

ROY G. HILLEBRAND.

Subscribed and sworn to before me this 24th day of April, 1946.

[Seal] A. L. WHITTLE,
Notary Public in and for the City and County of
San Francisco, State of California.

EXHIBIT "A"

Petaluma and Santa Rosa R.R. Co.

Uncollected Freight Charges

Debtor Poultry Producers of Cent. Calif. or Commodity Credit Corp. YU-PSR-151

From	To	Freight Bill No.	Waybill No. Date	Car Int.	No.	Commodity	Weight	Tariff Charges	Amount Collected	Bal'ce Due	
Etzikom, Alta.	Petaluma, Calif.	5498	44 4/12/44	LN	10913	Bulk Wheat	93395	989.29	780.85	208.44	
Etzikom, Alta.	Petaluma, Calif.	5606	43 4/10/44	LV	75624	Bulk Wheat	89400	947.14	747.49	199.65	
Etzikom, Alta.	Petaluma, Calif.	5607	42 4/10/44	SLSF	162775	Bulk Wheat	115000	1217.22	954.45	262.77	
Etzikom, Alta.	Petaluma, Calif.	5608	50 4/13/44	NW	41525	Bulk Wheat	120000	1269.97	1003.00	266.97	
Innisfail, Alta.	Petaluma, Calif.	7515	25 5/25/44	IC	28972	Bulk Wheat	120350	1369.94	1105.17	264.77	
									5793.56	4590.96	1202.60

EXHIBIT "B"

Petaluma and Santa Rosa R.R. Co.

Uncollected Freight Charges

Debtor Balfour Guthrie Co. Ltd. c/o Poultry Producers of Cent. Calif. or Commodity Credit Corp.

YU-PSR-152											
From	To	Freight Bill No.	Waybill No. Date	Car Int.	No.	Commodity	Weight	Tariff Charges	Amount Collected	Bal'ce Due	
Stavelly, Alta.	Petaluma, Calif.	5715	76 4/10/44	FW&D	7408	Bulk Wheat	90000	966.97	766.00	200.97	
Stavelly, Alta.	Petaluma, Calif.	5667	77 4/10/44	ITC	6067	Bulk Wheat	123960	1330.34	1054.66	275.68	
									2297.31	1820.66	476.65

Consigned to Balfour Guthrie Co., Ltd.

Delivery Taken by Poultry Producers of Cent. Calif.

EXHIBIT "C"

Petaluma and Santa Rosa R.R. Co.

Uncollected Freight Charges

Debtor Consumers Credit Corp.—Portland, Ore.

YU-PSR-156

~~File: YDA—P&SR—8~~

From	To	Freight Bill No.	Waybill No. Date	Car Int.	No.	Commodity	Weight	Tariff Charges	Amount Collected	Bal'ce Due
Etzikom, Alta. Can	Petaluma, Calif.	5605	CP 39 4/ 8/44	UP	192493	CP bulk wheat	123600	\$1,309.98		
									1.00 Insp. CP Ry. Co.	
									2.97 Insp. GN	
									\$1,307.95	1,033.06 274.89

Consigned to: ~~Order of Consumers Credit Corp.~~~~Notify Consumers Feed Store~~~~% Poultry Producers of Central of Calif.~~

Rate: 15 1/2¢ to Sweet Grass, Mont.

~~40¢ to Spokane, Wash.~~~~50¢ beyond~~Tariff: ~~CP Trf. W-819~~~~NPC—13~~~~PRFB—241~~

Consigned to Consumers Feed Store but delivery order signed by Poultry Producers of Central Calif.

[Endorsed]: Filed April 25, 1948, Municipal Court.

REVISIONS DATED 1-1-42

rates and charges published in this tariff are subject to the increases provided in Item X-148 successive issues thereof. The operation of portions of this tariff referred to in Item No. 1 is suspended as provided in Item 1.

- I. Ry. Cal. R. C. No. 75.
- Cancels Cal. R. C. No. 63.
- Ry. Minn. R. C. No. 940.
- Cancels Minn. R. C. No. 853.
- Ry. Mont. R. C. No. 652.
- Cancels Mont. R. C. No. 581.
- Ry. N. D. P. S. C. No. 231.
- Cancels N. D. P. S. C. No. 212.
- G. N. Ry. C. T. C. No. 2302.
- Cancels C. T. C. No. 2208.
- G. N. Ry. P. S. C. of Wis. No. 198.
- Cancels P. S. C. of Wis. No. 175.
- G. N. Ry. P. U. C. of I. No. 251.
- Cancels P. U. C. of I. No. 242.
- G. N. Ry. P. U. C. Ore. No. 643.
- Cancels P. U. C. Ore. No. 611.
- C.T.C. - Canadian Transport
- G. N. Ry. P. U. C. of S. D. No. 279.
- Cancels P. U. C. of S. D. No. 265.
- G. N. Ry. W. D. P. S. No. 1481.
- Cancels W. D. P. S. No. 1424.
- G. N. Ry. I. C. C. No. A-8071.
- Cancels I. C. C. No. A-7892.

G. N. Ry. G. F. O. No. 1240-O. 7-16-44
Cancels G. F. O. No. 1240-N.

Cancels 1240-N

GREAT NORTHERN RAILWAY COMPANY

— In Connection With —

FARMERS GRAIN AND SHIPPING COMPANY. (FX 2, No. 11.)
THE MIDLAND RAILWAY COMPANY OF MANITOBA. (FX 5, No. 1.)

Return to Mrs. B. B. B. a 7-16-44

LOCAL AND JOINT FREIGHT TARIFF

— Providing —

RULES AND CHARGES

— Governing —

Diversion or Reconsignment of Freight and Holding of Cars for Surrender of Bills of Lading or Written Orders, or Inspection at points on the above named lines.

OCT 6 1942

ISSUED SEPTEMBER 16, 1942.

EFFECTIVE OCTOBER 20, 1942.
(Except as otherwise provided herein.)

BURNHAM,
Night Traffic Manager,
Great Northern Railway Co.,
ST. PAUL, MINN.

B. S. MERRITT,
Western Traffic Manager,
Great Northern Railway Co.,
SEATTLE, WASH.

Issued by
W. D. O'BRIEN,
General Freight Agent,
Great Northern Railway Co.,
175 East Fourth Street,
ST. PAUL, MINN.

[Title of Municipal Court and Cause.]

NOTICE OF PETITION AND BOND FOR
REMOVAL

(With copy of Petition and Bond for
Removal Attached)

To: The Plaintiff Above Named and to A. T. Suter
and E. L. Van Dellen, Attorneys for Plaintiff:

You, and each of you, will please take notice that
Commodity Credit Corporation, one of the defend-
ants in the above-entitled action, intends to file
therein a petition and bond for removal, copies of
which petition and bond are hereto attached and
made a part hereof, reference to which is hereby
expressly made for further particulars; and that it
will, on the 2nd day of April, 1948, at 10 o'clock
a.m., or as soon thereafter as counsel can be heard,
apply to the above-entitled court at the City Hall,
in the City and County of San Francisco, State of
California, for an order, upon said petition and
bond and upon this notice, removing said cause to
the United States District Court in and for the
Northern District of California, Northern Division.

Dated: April 2, 1948.

/s/ FRANK J. HENNESSY,

United States Attorney for the Northern District
of California.

/s/ WILLIAM E. LICKING,

Assistant United States Attorney, Attorneys for
defendant Commodity Credit Corporation.

Receipt of copy of the foregoing notice of Petition and Bond for Removal (with copy of Petition and Bond for Removal attached) is hereby acknowledged this 2nd day of April, 1948.

/s/ A. T. SUTER,

/s/ E. L. VAN DELLEN,

Attorneys for Plaintiff.

[Endorsed]: Filed and entered April 2, 1948.
Municipal Court.

[Title of Municipal Court and Cause.]

PETITION FOR REMOVAL OF CAUSE TO
UNITED STATES DISTRICT COURT

To: The Honorable, The Municipal Court Of the
City and County Of San Francisco, State Of
California:

I.

Your Petitioner, Commodity Credit Corporation, is a corporation organized and existing under the laws of the State of Delaware and is one of the defendants in the above entitled suit, and as such files this petition.

Said suit, as appears from plaintiff's complaint on file herein is of a civil nature, at law over which the United States District Court hereinafter mentioned has original jurisdiction. Said suit, as appears from the complaint on file herein, reference to which is hereby made, and which is by said refer-

ence made a part hereof, was brought by the Petaluma and Santa Rosa Railroad Company, a California corporation and a common carrier subject to the provisions of the "Inter-State Commerce Act," against your petitioner and the Poultry Producers of Central California, a California corporation, to recover freight charges allegedly due on account of alleged shipments over the lines of plaintiff and its connecting carriers, in accordance with and pursuant to the tariffs of plaintiff and said connecting carriers published and on file with the Interstate Commerce Commission as required by the laws of the United States regulating interstate commerce (49 U.S.C.A. 6).

II.

Your petitioner as aforesaid is a corporation organized and existing under the laws of the State of Delaware and is now and was at all times mentioned in said complaint, an Agency of the United States by virtue of the provisions of 15 U.S.C.A. 713.

III.

Petitioner was not served with summons in said suit until March 24, 1948 and is not required by the laws of the State of California nor by any rule of court to answer or otherwise plead to said complaint prior to April 3, 1948.

IV.

By reason of the foregoing facts your petitioner claims and alleges that the cause is properly removable to the United States District Court in and for the Northern District of California, Southern Division thereof, upon the ground that the controversy arises under a law regulating commerce, (49 U.S.C.A. 6), of which the District Court of the United States has original jurisdiction. (28 U.S.C.A. 41, par. 8).

V.

Your petitioner files and offers herewith its bond, with good and sufficient surety, for its entering in the Northern District of California, Southern Division thereof within thirty (30) days from the filing of this petition, a certified copy of the record of said suit, and for paying all costs which may be awarded by said District Court should said Court hold said suit to have been wrongfully or improperly removed thereto.

Wherefore, petitioner prays that this Honorable Court accept said bond as good and sufficient, approve the same, and make its order for the removal of said suit to the United States District Court for the Northern District of California, Southern Division thereof, pursuant to the law of the United States of America in such case made and provided (28 U.S.C.A. 71), and that it cause the record herein to be removed to said District Court, and

that no other or further proceedings be had in said suit in this Court.

Respectfully,

COMMODITY CREDIT
CORPORATION,

By /s/ HENRY C. SOITO,
Acting Director, San Francisco Office Commodity
Credit Corporation.

/s/ JESSE R. FARR,
Regional Attorney, Office of the Solicitor, U. S.
Department of Agriculture.

/s/ FRANK J. HENNESSY,
U. S. Attorney, Northern
District of California.

WILLIAM E. LICKING,
Asst. U. S. Attorney,
Attorneys for Petitioner.

State of California,
City and County of San Francisco—ss.

Henry C. Soito, being first duly sworn, deposes and says:

I am an officer, to wit: Acting Director of the San Francisco Office of the Commodity Credit Corporation, one of the defendants in the above-entitled action, and I make this verification on its behalf. I have read the foregoing petition and know the contents thereof, and the same is true of my own knowledge, except as to the matters therein stated on

information or belief, and as to those matters I believe it to be true.

HENRY C. SOITO.

Subscribed and sworn to before me this 2nd day of April, 1948.

/s/ JOHN E. SCHAEFFER,
Deputy Clerk U. S. District Court, Northern District of California.

Receipt of service of the above Petition, Notice of Petition and Bond for Removal is hereby acknowledged, and notice of hearing is hereby expressly waived.

/s/ A. T. SUTER,

/s/ E. L. VAN DELLEN,
Attorneys for Plaintiff, Petaluma and Santa Rosa Railroad Company.

Receipt of service of the above Petition, Notice of Petition and Bond for Removal is hereby acknowledged, and this defendant hereby specifically waives any objection to the contemplated removal.

/s/ CARL R. SCHULZ,
Attorney for Poultry Producers of Central California.

[Endorsed]: Filed and entered April 2, 1948, Municipal Court.

[Title of Municipal Court and Cause.]

BOND FOR REMOVAL

Know all Men by These Presents:

That United States Fidelity and Guaranty Company, a corporation organized and existing under the laws of the State of Maryland, which said corporation has complied with the laws of the State of California with reference to doing and transacting business in said state, as surety, is held and firmly bound unto the Petaluma and Santa Rosa Railroad Company, a corporation, plaintiff in the above-entitled action, in the penal sum of Five Hundred Dollars (\$500), for the payment of which sum well and truly to be made unto said plaintiff, its heirs, executors, administrators or assigns, the undersigned, United States Fidelity and Guaranty Company binds itself, its successors and assigns, jointly and severally firmly by these presents.

Sealed with the seal of said company and dated at the City and County of San Francisco, State of California, this 2nd day of April, 1948.

Whereas Commodity Credit Corporation, a corporation, one of the defendants in the above-entitled action, has petitioned or is about to petition the above named Municipal Court of the City and County of San Francisco, State of California, for the removal of the above-entitled cause or action therein pending, wherein Petaluma and Santa Rosa Railroad Company, a corporation, is plaintiff, and Commodity Credit Corporation, a Corporation,

Poultry Producers of Central California, a corporation, Doe One, Doe Two, Doe Three, are defendants, to the United States District Court in and for the Northern District of California, Southern Division.

Now, the condition of this obligation is such that if the said defendants shall enter in said United States District Court in and for the Northern District of California, Southern Division, within thirty (30) days from the date of the filing of its petition for removal of said cause, a certified copy of the record in the above entitled suit or action, and shall pay all costs that may be awarded by said District Court if said District Court shall hold that said suit was wrongfully or improperly removed thereto, then this obligation shall be void, otherwise it shall remain in full force and effect.

The said United States Fidelity and Guaranty Company hereby expressly agrees that in case of a breach of any condition hereof the said District Court may, upon notice to it of not less than ten (10) days, proceed summarily in the action, suit, case or proceeding in which this bond is given to ascertain the amount which said surety is bound to pay on account of such breach, and render judgment therefor against it, and award execution therefor.

Witness the signature and seal of the undersigned the day and year first above written.

UNITED STATES FIDELITY
AND GUARANTY COM-
PANY,
PATRICIA LOYD,

Its Attorneys in Fact,

Power of Attorney is on file in the County above named.

State of California,
County of San Francisco—ss.

On this 2nd day of April in the year one thousand nine hundred and forty-eight before me, G. B. Gillen a Notary Public in and for the County of San Francisco personally appeared Patricia Loyd known to me to be the person whose name is subscribed to the within instrument as the Attorney-in-fact of the United States Fidelity and Guaranty Company, and acknowledged to me that he subscribed the name of the United States Fidelity and Guaranty Company thereto as principal and his own name as Attorney-in-fact.

G. B. GILLEN,

Notary Public in and for the County of San Francisco, State of California.

[Endorsed]: Filed and entered April 2, 1948, Municipal Court.

[Title of Municipal Court and Cause.]

ORDER FOR REMOVAL

On reading the petition of defendant Commodity Credit Corporation for the removal of the above entitled action to the United States District Court, in and for the Northern District of California, Southern Division, and the bond for removal on behalf of said defendant, which said petition and bond have been heretofore filed in said action; and it appearing to the Court that written notice of said petition and bond for removal were duly given by said defendant to plaintiff prior to filing said petition and bond, and this matter coming on for hearing, said bond is hereby approved and accepted as good and sufficient, and

It Is Hereby Ordered that said cause be, and the same is hereby, removed to the United States District Court, in and for the Northern District of California, Southern Division.

Dated: This 2nd day of April, 1948.

HARRY J. NEUBARTH,

Judge of the Municipal Court.

[Endorsed]: Filed and entered April 2, 1948, Municipal Court.

The foregoing document on removal from the Municipal Court of the City and County of San Francisco, [Endorsed]: Filed April 22, 1948, U. S. D. C.

In the United States District Court for the Northern District of California, Southern Division

No. 28,025-R

PETALUMA AND SANTA ROSA RAILROAD COMPANY, a corporation,

Plaintiff,

vs.

COMMODITY CREDIT CORPORATION, a Corporation, POULTRY PRODUCERS OF CENTRAL CALIFORNIA, a Corporation, DOE ONE, DOE TWO, DOE THREE,

Defendants.

ANSWER OF COMMODITY CREDIT CORPORATION

Comes now Commodity Credit Corporation, named co-defendant in this proceeding, and answers the complaint and the allegations therein as follows:

I.

This defendant is without knowledge or information sufficient to form a belief as to the truths of the allegations in paragraph I of the complaint and therefore denies them.

II.

The allegations in paragraph II of the complaint are admitted.

III.

This defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph II of the complaint and therefore denies them.

IV.

Paragraph IV of the complaint contains no allegations of material fact requiring an answer.

V.

This defendant admits the allegations in paragraph V of the complaint, except that the allegations of indebtedness to plaintiff are denied. Plaintiff's freight bills as originally rendered and paid totaled the amounts stated in the exhibits annexed to the complaint, in the column entitled "Amount Collected," and the lawful tariff charges totaling \$7,444.68 were paid in full.

VI.

The shipments covered by said freight bills consisted entirely of carloads of bulk wheat, which were moved by plaintiff and connecting carriers in the United States from Sweetgrass, Montana, a Canadian border station on the lines of the Great Northern Railway, to destination in California on plaintiff's lines. Upon leaving Sweetgrass said movements became subject to the provisions of the Great Northern Railway Company's local and joint tariffs, particularly its tariff, I.C.C. No. A-8071

(and supplements), entitled "Local and Joint Freight Tariff Providing Rules and Charges Governing the Diversion or Reconsignment of Freight and Holding of Cars for Surrender of Bills of Lading or Written Orders, or Inspection at points on the above named lines." Upon leaving Sweetgrass all of said shipments became governed by Item 143 of said tariff which provided as follows:

"Item No. 143. Grain, Seeds, etc., Placed on Track for Inspection and Held for Disposition Orders:

Not more than two inspections (or one inspection in addition to a diversion or reconsignment without inspection) en route and one inspection (or diversion or reconsignment) within the switching limits of the destination at which the car is unloaded will be permitted; Provided, that if, after car has received the two inspections (or one inspection and one diversion or reconsignment) en route authorized in this rule, it is subsequently inspected (or diverted or reconsigned) and reforwarded without unloading, it will be subject to the combination of tariff rates applicable on a shipment terminating at and on a shipment originating at the point at which such subsequent inspection (or diversion or reconsignment) is performed in effect on date of shipment from point of origin.

In applying this rule, the number of stops for inspection (or diversion or reconsignments without inspection) shall be reckoned from the last point of

loading of car or from the point at which it becomes subject to combination of rates as provided in this rule.

* Expires six months after the termination of the present war.

(The form of this publication is permitted by authority of the Interstate Commerce Commission permission No. 9014 of May 6, 1942.)”

No person representing this defendant gave to the carriers any orders requiring inspection or diversion Sweetgrass subject to Item 143 in excess of the allowances provided in the first clause of Item 143.

The plaintiff's freight bills as paid were properly calculated on a rate basis using the through tariff rates from Sweetgrass to destination. All lawful charges have been paid in full.

Wherefore, Defendant Commodity Credit Corporation prays the Court to dismiss the complaint against it.

Respectfully submitted,

/s/ H. G. MORISON,

Asst. Attorney General.

/s/ FRANK J. HENNESSY,

U. S. Attorney.

/s/ WILLIAM E. LICKING,

Asst. U. S. Attorney, Attorneys for Commodity
Credit Corporation.

[Endorsed]: Filed June 29, 1948.

[Title of District Court and Cause.]

ANSWER TO COMPLAINT AND
CROSS-CLAIM

Comes now defendant Poultry Producers of Central California and answers the complaint and the allegations therein as follows:

1. Answering the allegations of paragraph V of the complaint, admits that shipments were made as described in said paragraph and in Exhibits "A," "B" and "C" of the complaint, but alleges that there were no undercharges on said shipments, and alleges that the tariff charges, computed in accordance with the tariffs of the plaintiff duly posted, published and on file with the Interstate Commerce Commission, were in the sums set forth on Exhibits "A," "B" and "C" in the column headed "Amount collected," and alleges that the total tariff charges on all the shipments amounted to \$7,444.68 and not more; and alleges that all tariff charges on said shipments have been paid and that this defendant is not indebted to plaintiff in any sum.

2. Further answering said complaint, this defendant alleges that the complaint does not state a claim against this defendant upon which relief can be granted.

Cross-Claim

Defendant Poultry Producers of Central California cross-claims against defendant Commodity Credit Corporation and alleges:

1. That defendant Poultry Producers of Central California is a corporation organized, existing and doing business under and by virtue of the laws of the State of California.

2. That defendant Commodity Credit Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware.

3. That the shipments described in the complaint were sold by defendant Commodity Credit Corporation to defendant Poultry Producers of Central California on a delivered basis at Petaluma, California, and by the terms of that agreement defendant Commodity Credit Corporation agreed to pay transportation charges on said shipments to Petaluma, California.

4. That if any additional charges are due or payable on said shipments by defendant Poultry Producers of Central California then, in that event, defendant Commodity Credit Corporation is obligated to reimburse defendant Poultry Producers of Central California for any payment it may be required to make in payment of such charges.

Wherefore, defendant Poultry Producers of Central California prays judgment that plaintiff recover nothing, or in the alternative that it have judgment against defendant Commodity Credit Corporation on its cross-claim for the amount of any judgment which may be rendered against it in this

action, and for its costs of suit and such other relief as may be just and equitable in the premises.

/s/ CARL R. SCHULZ,

Attorney for defendant Poultry Producers of Central California.

[Endorsed]: Filed August 23, 1948.

In the Southern Division of the United States District Court for the Northern District of California

No. 28,025-R

PETALUMA AND SANTA ROSA RAILROAD COMPANY, a corporation,

Plaintiff,

vs.

COMMODITY CREDIT CORPORATION, a corporation, POULTRY PRODUCERS OF CENTRAL CALIFORNIA, a corporation, et al.,

Defendants.

MEMORANDUM OPINION

Action to recover freight charges. Judgment for plaintiff in accordance with opinion.

A. T. Suter and E. L. Van Dellen of San Francisco, California, attorneys for plaintiff.

Frank J. Hennessy, United States Attorney, and C. Elmer Collett, Assistant United States Attorney,

of San Francisco, California, attorneys for defendant Commodity Credit Corporation.

Carl R. Schulz of San Francisco, California, attorney for defendant Poultry Producers of Central California.

Roche, D. J.:

This is an action to recover freight charges alleged to be due on eight wheat shipments made during the spring of 1944 from various points in Canada to defendant Poultry Producers of Central California. The wheat was purchased by defendant Commodity Credit Corporation as part of a special emergency wartime United States Government relief program. Pursuant to the purchase agreement the Canadian shipper prepaid the freight charges to the border point known as Sweetgrass, Montana, and Commodity Credit Corporation paid the charges from that point on. This litigation concerns the applicable rate from Sweetgrass to Petaluma, California, the shipments' destination.

The case was tried to the Court on stipulated facts from which the foregoing appear. It further appears that plaintiff is a connecting line with the Great Northern Railway Company into whose hands the shipments passed at Sweetgrass and that the freight rate is governed by the provisions of Great Northern's Rules Tariff No. 1240-O, I.C.C. No. A-8071, Item No. 143, which, so far as pertinent, is as follows:

“(E) Item No. 143. Grain, Seeds, etc., Placed on Track for Inspection and Held for Disposition Orders.

“Not more than two inspections (or one inspection in addition to a diversion or reconsignment without inspection) en route and one inspection (or diversion or reconsignment) within the switching limits of the destination at which the car is unloaded will be permitted; Provided, that if, after car has received the two inspections (or one inspection and one diversion or reconsignment) en route authorized in this rule, it is subsequently inspected (or diverted or reconsigned) and reforwarded without unloading, it will be subject to the combination of tariff rates applicable on a shipment terminating at and on a shipment originating at the point at which such subsequent inspection (or diversion or reconsignment) is performed in effect on date of shipment from point of origin.

“In applying this rule, the number of stops for inspection (or diversion or reconsignments without inspection) shall be reckoned from the last point of loading of car or from the point at which it becomes subject to combination of rates as provided in this rule.”

This tariff provision was made effective October 20, 1942, and was for the purpose of conserving cars and keeping traffic moving by restricting the number of inspections and diversions permitted. At the time it became effective no shipments of wheat were being transported from Canadian points to the United States and hence its applicability to

shipments originating in Canada was not contemplated when the rule was framed.

By amendment effective February 16, 1949, the second paragraph of the tariff rule had added to it the phrase, "or the point where the car comes in possession of carriers within the United States." The publication announcement of this amendment bears the statement, "The above mentioned change is for clarification purposes."

The eight shipments were originally billed to defendant Commodity Credit Corporation at Ogden, Utah, for inspection and diversion but before they reached Sweetgrass, blanket instructions were issued to Great Northern Railway to divert all such shipments to Spokane, Washington, for inspection and diversion. This was done, and as each of the eight cars reached Spokane, it was inspected and diverted to Petaluma, California, where it was delivered to defendant Poultry Producers as the new consignee. Each car had also received one inspection in Canada, pursuant to requirements of the Canada Grain Act, prior to its arrival at Sweetgrass.

The question for decision is whether such Canadian inspection should be included in figuring the number of inspections and diversions each shipment was subjected to. Its inclusion would result in each shipment having two inspections and one diversion before its diversion at Spokane and thus it would become subject to the combination of rates (Sweetgrass to Spokane; Spokane to Petaluma) as having

exceeded the number of inspections and diversions allowed by the tariff rule. On the other hand, if each shipment be treated as originating at Sweetgrass, the flat through rate from Sweetgrass to Petaluma would be applicable since the only inspection and diversion would be those at Spokane.

Plaintiff's original freight bills were computed at the flat rate and were duly paid by defendant Commodity Credit Corporation. Shortly thereafter Plaintiff submitted supplemental bills for additional charges based on the combination rate, on the theory that the Canadian inspection stop should be included. These supplemental charges are in dispute.

Plaintiff bases its theory on the language of the tariff rule's second paragraph, which provides that "In applying this rule, the number of stops for inspection (or diversion or reconsignments without inspection) shall be reckoned from the last point of loading of car or from the point at which it becomes subject to combination of rates as provided in this rule." (Underlining the Court's.) Plaintiff points out that the last point of loading each car was in Canada preceding the Canadian inspection and that the rule, by its terms, thus includes such inspection.

Defendant takes the position that an American railroad's tariff rate cannot be made to depend on what happens to a shipment before it reaches the United States and that, furthermore, the amendment to the tariff rule shows that it was never contemplated that it would be applied to a situation like the present one.

The difficulty with defendant's first argument is that the rate is not affected. The tariff rule simply lays down certain requirements which must be met if the flat through rate is to be applicable. If they are not met, the combination rate applies. In neither event is the freight rate itself changed. The requirements are stated in clear, unambiguous language. The Court has no power to change them by inserting another and different requirement, even though it might seem more reasonable and equitable.

Defendant's second argument would have the Court apply retroactively the 1949 amendment to the tariff rule. Tariffs have the force of law and, if ambiguous, are subject to the usual rules of statutory construction. Any ambiguity should be resolved against the carrier. However, if the tariff provisions are clearly expressed, the fact that the framers may have omitted a provision later found necessary to make the tariff conform to the purpose of its framers does not render the original tariff rule ambiguous. See Southern Pacific Company v. Rice Sales Co., 174 S.W. 2d 1018 and cases cited therein. The Court cannot concern itself with the fact that a situation not contemplated originally arose after the rule was framed. Its duty is to apply the rule as it existed at the time of the shipments in question. When this is done it is clear that the last point of loading each car was in Canada; that each car received one inspection and one diversion after such loading and prior to its inspection at Spokane; that upon inspection and

diversion at Spokane it became subject to the combination of rates, as provided in the tariff rule. It follows, therefore, that plaintiff is entitled to the additional freight charges.

Defendant Commodity Credit Corporation's objection to the inclusion of the Canadian inspection as a stipulated fact is overruled. Defendant Poultry Producers of Central California having cross-claimed against the Commodity Credit Corporation for the amount of any judgment that might be rendered against it and the parties having stipulated that Poultry Producers of Central California is entitled to such reimbursement, it is now by the Court

Ordered that there be entered herein, upon findings of fact and conclusions of law, judgment in favor of the plaintiff and against the defendant Commodity Credit Corporation in the sum of \$1,954.14, together with interest thereon at the rate provided by law, and that the respective parties pay their own costs.

Dated: April 15th, 1949.

/s/ MICHAEL J. ROCHE,
U. S. District Judge.

[Endorsed]: Filed April 15, 1949.

[Title of District Court and Cause.]

PROPOSED AMENDMENTS TO FINDINGS
OF FACT AND CONCLUSIONS OF LAW
LODGED BY PLAINTIFFS

Defendant, Commodity Credit Corporation, does hereby propose the following amendments and additions to the Findings of Fact and Conclusions of Law lodged by plaintiff.

I.

That proposed Findings of Fact X, XIV and XV be not adopted by the Court in its Findings in that said proposed Findings of Fact X, XIV and XV are not findings of fact but are conclusions of law.

II.

That proposed Finding of Fact X be amended to read as follows:

X.

That the provision of the Great Northern Railway Rules Tariff No. 1240-O, ICC No. A-8071, Item No. 143, "or from the point at which it becomes subject to combination of rates as provided in this rule," was not applicable to the said shipments during their movement in Canada, in that they were not subject to Great Northern Railway Tariffs during the course of said movement in Canada.

III.

That the following Finding of Fact be made:

XVIII.

That the said Item 143 of the Great Northern Railway Rules was amended to become effective February 16, 1949, by the addition of the following phrase: "or the point where the car comes in possession of carriers within the United States," said amendment being "for clarification purposes."

IV.

That the following Finding of Fact be made:

XIX.

That the provisions of the Great Northern Railway Rules Tariff referred to herein were ambiguous with regard to their application to cars prior to the time they came into possession of the Great Northern Railway within the United States in that the portion of Item 143 "or from the point at which it becomes subject to combination rates as provided in this rule," could not be applied prior to the time the said shipment came into possession of the Great Northern Railway within the United States.

V.

That the proposed Conclusions of Law be amended to read as follows:

1. That the provisions of Great Northern Railway Rules Tariff Item No. 143 are applicable to the shipments referred to herein at the time and from the point where said shipments came into possession of the Great Northern Railway within the United States, and the number of inspections and

diversions must be determined in accordance with said Rule Item No. 143 from the said point where said shipment came within possession of the Great Northern Railway within the United States.

2. That defendant Commodity Credit Corporation has paid all lawful tariff charges for transportation of the shipments referred to herein.

3. That plaintiff is entitled to nothing by the complaint on file herein and defendant should have judgment for its costs of suit.

/s/ FRANK J. HENNESSY,
United States Attorney.

/s/ C. ELMER COLLETT,
Assistant U. S. Attorney.

Lodged May 27, 1949.

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above-entitled matter came on before this Court, sitting without a jury, for trial, Honorable Michael J. Roche, presiding, A. T. Suter, of San Francisco, California, appearing for the plaintiff, Frank J. Hennessy, United States Attorney, and C. Elmer Collett, Assistant United States Attorney, of San Francisco, California, appearing for defendant Commodity Credit Corporation, and Carl R. Schulz, of San Francisco, California, appear-

ing for defendant Poultry Producers of Central California, and

Said action having been tried on the 16th day of February, 1949, upon a Stipulation of Facts, and after argument and submission of briefs by plaintiff and defendant Commodity Credit Corporation, and said action having been submitted for decision on the 23rd day of February, 1949, the court being advised in the premises, now makes the following:

Findings of Fact

I.

That this action arises under a law of the United States regulating interstate commerce in that it arises under Section 6(7) and other sections of Part I of the Interstate Commerce Act of which this court has jurisdiction under Title 28, U. S. Code, Section 41 Subdivision (8).

II.

That plaintiff Petaluma and Santa Rosa Railroad Company is now and at all times herein mentioned was a corporation organized and existing under and by virtue of the laws of the State of California with its principal place of business in the City and County of San Francisco.

III.

That defendant Commodity Credit Corporation is now and at all times herein mentioned was a corporation organized and existing under and by

virtue of the laws of the State of Delaware and doing business in the State of California.

IV.

That defendant Poultry Producers of Central California is now and at all times herein mentioned was a corporation organized and existing under and by virtue of the laws of the State of California with its principal place of business in the City and County of San Francisco.

V.

That defendant Commodity Credit Corporation was the original consignee of the following described shipments of bulk wheat:

	<u>Car No.</u>	<u>Origin</u>	<u>Date</u>	<u>Final Destination</u>
LN	10913	Etzikom, Alta.	4/12/44	Petaluma, California
LV	75624	Etzikom, Alta.	4/10/44	Petaluma, California
SLSF	162775	Etzikom, Alta.	4/10/44	Petaluma, California
NW	41525	Etzikom, Alta.	4/13/44	Petaluma, California
IC	28972	Innisfail, Alta.	5/25/44	Petaluma, California
FW&D	7408	Stavelly, Alta.	4/10/44	Petaluma, California
ITC	6067	Stavelly, Alta.	4/10/44	Petaluma, California
UP	192493	Etzikom, Alta.	4/ 8/44	Petaluma, California

VI.

That plaintiff Petaluma and Santa Rosa Railroad Company delivered each of said shipments to defendant Poultry Producers of Central California at Petaluma, California.

VII.

That freight charges were originally assessed on each of said shipments on the basis of a rate of

15½ cents per cwt. on the movement from the Canadian point of origin to the international boundary at Sweetgrass, Montana (Coutts Alberta, Canada), and a rate of 68 cents per cwt. on the movement from Sweetgrass, Montana, to Petaluma, California, or a total rate of 83½ cents per cwt., plus a special charge of \$1.00 for inspection in Canada; that the total charges assessed on the said shipments computed on the foregoing rate basis were the sum of \$7,444.68, which charges have been paid in part by the original shipper and in part by defendant Commodity Credit Corporation.

VIII.

That at the time each of the said shipments was transported the following provisions of Great Northern Railway's Rules Tariff No. 1240-O. I.C.C. No. A-8071, Item No. 143, were in effect:

“(E) Item No. 143. Grain, Seeds, etc., placed on Track for Inspection and Held for Disposition Orders.

“Not more than two inspections (or one inspection in addition to a diversion or reconsignment without inspection) en route and one inspection (or diversion or reconsignment) within the switching limits of the destination at which the car is unloaded will be permitted; Provided, that if, after car has received the two inspections (or one inspection and one diversion or reconsignment) en route authorized in this rule, it is subsequently inspected (or diverted or reconsigned) and reforwarded without unloading, it will be subject to the

combination of tariff rates applicable on a shipment terminating at and on a shipment originating at the point at which such subsequent inspection (or diversion or reconsignment) is performed in effect on date of shipment from point of origin.

“In applying this rule, the number of stops for inspection (or diversion or reconsignments without inspection) shall be reckoned from the last point of loading of car or from the point at which it becomes subject to combination of rates as provided in this rule.”

IX.

That said tariff provision was made effective on October 20, 1942, and was for the purpose of conserving cars and keeping traffic moving by restricting the number of inspections and diversions permitted.

X.

That under the provisions of the foregoing tariff rule the number of inspections and/or diversions allowed each of the said shipments must be computed from the original point of origin in Canada, and where such shipments received more than two inspections and/or diversions, charges to be assessed for transportation in the United States are properly computed on the basis of a combination of rates to and from the point at which a third inspection and/or diversion is requested.

XI.

That each of the said shipments was inspected at a point in Canada.

XII.

That each of said shipments was originally destined to Ogden, Utah, but prior to their arrival at that point each of said shipments was diverted at request of defendant Commodity Credit Corporation to Spokane, Washington.

XIII.

That after arrival of each of said shipments at Spokane, Washington, they were inspected and thereafter diverted at the request of defendant Commodity Credit Corporation to defendant Poultry Producers of Central California at Petaluma, California.

XIV.

That under the foregoing facts and provisions of the Great Northern Railway Rules Tariff referred to, as interpreted herein, the applicable tariff charges on each of the said shipments are those based upon a rate of $15\frac{1}{2}$ cents per cwt. on the movement from the Canadian point of origin to the international boundary at Sweetgrass, Montana (Coutts, Alberta, Canada), and a rate of 40 cents per cwt. on the movement from Sweetgrass, Montana, to Spokane, Washington, and a rate of 50 cents per cwt. on the movement from Spokane, Washington, to Petaluma, California, or a total rate of $\$1.05\frac{1}{2}$ per cwt., plus a special charge of \$1.00 for inspection in Canada and a charge of \$2.97 for the inspection of each car at Spokane, Washington; that the total charges on the ship-

ments, computed on the foregoing rate basis, are the sum of \$9,398.82.

XV.

That the difference between the freight charges which have been collected on the said shipments in the sum of \$7,444.68 and the lawful tariff charges as indicated herein in the sum of \$9,398.82 is the sum of \$1,954.14; that the latter sum has not been paid by the defendants herein, or anyone, to the plaintiff herein, or to any of its connecting carriers.

XVI.

That the rate of 15½ cents per cwt. referred to herein is contained in applicable tariffs of Canadian Railways; that the rate of 68 cents per cwt. referred to herein is contained in Item 3900-A Pacific Freight Tariff Bureau Tariff No. 241-B, Agent J. P. Haynes, ICC No. 1364; that the rate of 40 cents per cwt. referred to herein is contained in North Pacific Coast Freight Bureau Tariff 13-C, ICC No. 606; that the rate of 50 cents per cwt. referred to herein is contained in Item 1950 Pacific Freight Tariff Bureau Tariff 241-B, Agent J. P. Haynes, ICC No. 1364.

XVII.

That the various shipments referred to herein were transported from points of origin indicated in paragraph V hereof to the international boundary at Sweetgrass, Montana (Coutts, Alberta, Canada), and thence to Spokane, Washington, and thence to Petaluma, California, where the said ship-

ments were delivered to defendant Poultry Producers of Central California by the plaintiff Petaluma and Santa Rosa Railroad Company.

Conclusions of Law

1. That the provisions of the Great Northern Railway Rules Tariff referred to herein are applicable to the shipments referred to herein, and those provisions are interpreted to mean that the number of inspections and/or diversions allowed each of the said shipments must be computed from the original point of origin in Canada, and where more than two inspections and/or diversions are used in connection with a particular shipment the charges to be assessed for transportation in the United States are properly computed on the basis of a combination of rates to and from the point at which a third inspection and/or diversion is requested.

2. That under the facts found herein and interpretation of Great Northern Railway Rules Tariff referred to herein, the lawful tariff charges for transportation of the shipments referred to herein are those computed on the basis of a rate of 15½ cents per cwt. for the movement from the Canadian point of origin to the international boundary at Sweetgrass, Montana (Coutts, Alberta, Canada), and a rate of 40 cents per cwt. for the movement from Sweetgrass, Montana, to Spokane, Washington, and a rate of 50 cents per cwt. for the movement from Spokane, Washington to Petaluma, California, or a total rate of \$1.05½ per cwt., plus a spe-

cial charge of \$1.00 for inspection in Canada, and a charge of \$2.97 for the inspection of each car at Spokane, Washington.

3. That defendant Commodity Credit Corporation is lawfully obligated to pay unpaid freight charges on the said shipments in the sum of \$1,954.14.

4. That plaintiff have judgment against defendant Commodity Credit Corporation in the sum of \$1,954.14, together with interest at the rate of 7 per cent, to be computed on the unpaid freight charges on each shipment from the date of delivery thereof as indicated below:

<u>Car Number</u>	<u>Date of Delivery</u>	<u>Amount of Undercharge</u>
L&N 10913	May 3, 1944	\$ 208.44
LV 75624	May 5, 1944	199.65
SLSF 162775	May 5, 1944	262.77
NW 41525	May 5, 1944	266.97
IC 28972	June 17, 1944	264.77
FW&D 7408	May 8, 1944	200.97
ITC 6067	May 6, 1944	275.68
UP 192493	May 5, 1944	274.89
		<hr/>
		\$1,954.14

5. That each party hereto pay their own costs.

Let the Judgment Be Entered Accordingly.

Dated this 10th day of June, 1949.

/s/ MICHAEL J. ROCHE,
U. S. District Judge.

Receipt of Copy acknowledged.

Lodged April 21, 1949.

[Endorsed]: Filed June 10, 1949.

In the Southern Division of the United States
District Court for the Northern District of
California

No. 28,025-R

PETALUMA AND SANTA ROSA RAILROAD
COMPANY, a Corporation,

Plaintiff,

vs.

COMMODITY CREDIT CORPORATION, a Cor-
poration, POULTRY PRODUCERS OF CEN-
TRAL CALIFORNIA, a Corporation, et al.,

Defendants.

JUDGMENT

The above-entitled action came on regularly for trial in the above-entitled court sitting without a jury, Honorable Michael J. Roche, presiding, A. T. Suter appearing for the plaintiff, Frank J. Hennessy, United States Attorney, and C. Elmer Collett, Assitant United States Attorney, appearing for defendant Commodity Credit Corporation, and Carl R. Schulz appearing for defendant Poultry Producers of Central California, and

Said action having been tried on the 16th day of February, 1949, upon a Stipulation of Facts, and after argument and submission of briefs by plaintiff and defendant Commodity Credit Corporation, and said action having been submitted for decision on the 23rd day of February, 1949, and

the Court being fully advised in the premises, and having signed and ordered filed its Findings of Fact and Conclusions of Law,

Now, Therefore, it is hereby Ordered, Adjudged, and Decreed that plaintiff have judgment of and from the defendant Commodity Credit Corporation in the sum of \$1,954.14, together with interest at the rate of 7% to be computed on the unpaid freight charges on each shipment from the date of delivery thereof as indicated below:

<u>Car Number</u>	<u>Date of Delivery</u>	<u>Amount of Undercharge</u>
L&N 10913	May 3, 1944	\$ 208.44
LV 75624	May 5, 1944	199.65
SLSF 162775	May 5, 1944	262.77
NW 41525	May 5, 1944	266.97
IC 28972	June 17, 1944	264.77
FW&D 7408	May 8, 1944	200.97
ITC 6067	May 6, 1944	275.68
UP 192493	May 5, 1944	274.89
		<hr/> \$1,954.14

Dated this 10th day of June, 1949.

/s/ MICHAEL J. ROCHE,
U. S. District Court Judge.

Entered in Civil Docket June 11th, 1949.

Approved as to form in accordance with Rule 5(d).

/s/ FRANK J. HENNESSY,
Attorney for Defendant,
Commodity Credit Corp.

/s/ CARL R. SCHULZ,

Attorney for Defendant Poultry Producers of Central California.

Lodged April 21, 1949.

[Endorsed]: Filed June 10, 1949.

[Title of District Court and Cause.]

NOTICE OF MOTION FOR NEW TRIAL

To the Honorable the above-entitled Court, and to Petaluma and Santa Rosa Railroad Company, a corporation, Plaintiff, and to A. T. Suter, Esq., 65 Market Street, San Francisco, California, attorney for plaintiff:

You are hereby notified that on June 27, 1949, at the hour of 10:00 o'clock a.m. on said day, or as soon thereafter as counsel can be heard, at the Court Room of the above-entitled court, in the Post Office Building in the City and County of San Francisco, State and Northern District of California, defendants will and hereby do move the above-entitled court for its order granting a new trial in the above-entitled action.

Said motion will be made on the ground that said Findings of Fact and Conclusions of Law and Judgment made herein are:

1. The decision is contrary to the law in the case.
2. The decision is contrary to the evidence in the case.

3. The decision and judgment are contrary to the law and the evidence in the case.

4. The evidence is insufficient to support the decision.

5. The evidence is insufficient to support the decision, and the judgment.

6. The decision is against the weight of and contrary to the evidence, and that the evidence herein compels contrary Findings, Conclusions and judgment.

7. The decision and judgment are contrary to and against law.

8. The evidence shows that a decision and judgment should have been rendered in favor of defendants, and that the decision and judgment, as rendered, are contrary to law, and will be based on this notice, the minutes of the court, the record of the evidence herein, on the said Findings, Conclusions and Judgment made herein, and on all the records, papers, pleadings and files in the above-entitled action.

Dated: June 21, 1949.

/s/ FRANK J. HENNESSY,
U. S. Attorney.

/s/ C. ELMER COLLETT,
Assistant U. S. Attorney, Attorneys for Defendant,
Commodity Credit Corporation.

[Endorsed]: Filed June 21, 1949.

[Title of District Court and Cause.]

ORDER DENYING MOTION
FOR NEW TRIAL

It Is Ordered that the defendants' motion for a new trial in the above-entitled cause be and same is hereby Denied.

Dated: October 21st, 1949.

/s/ MICHAEL J. ROCHE,
U. S. District Judge.

Copies mailed.

[Endorsed]: Filed October 21, 1949.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice Is Hereby Given that the defendant Commodity Credit Corporation hereby appeals to the United States Court of Appeals for the Ninth Circuit from the final judgment entered by the United States District Court for the Northern District of California in favor of plaintiff and against said defendant on June 11, 1949, and from the Order dated October 21, 1949 denying defendant's Motion for New Trial.

Dated: November 7, 1949.

/s/ FRANK J. HENNESSY,
U. S. Attorney.

/s/ C. ELMER COLLETT,
Asst. U. S. Attorney.

[Endorsed]: Filed November 8, 1949.

[Title of District Court and Cause.]

DEFENDANT'S DESIGNATION OF CON-
TENTS OF RECORD ON APPEAL

To the Clerk of the above-entitled Court, and to
A. T. Suter, Esq., 65 Market Street, San Fran-
cisco 5, California, Attorney for Plaintiff:

The defendant Commodity Credit Corporation, by
its attorneys, hereby designates for inclusion in
Transcript of Record upon Appeal the complete
record and all the proceedings and evidence in the
action before the District Court.

Dated: November 30, 1949.

/s/ FRANK J. HENNESSY,
U. S. Attorney.

/s/ C. ELMER COLLETT,
Asst. U. S. Attorney.

[Endorsed]: Filed November 30, 1949.

PLAINTIFF'S EXHIBIT NO. 1

In the United States District Court for the Northern District of California, Southern Division

Civil Action No. 28,025-R

PETALUMA AND SANTA ROSA RAILROAD
COMPANY, a corporation,

Plaintiff,

vs.

COMMODITY CREDIT CORPORATION, a corporation,
POULTRY PRODUCERS OF CENTRAL CALIFORNIA, a corporation, et al.,

Defendants.

STIPULATION

1. The parties hereto agree that the following statements of fact are correct. Each party, however, reserves the right to introduce additional evidence not inconsistent therewith and also to object, on grounds of immateriality or irrelevance, to any fact stated in this stipulation.

2. This action involves a dispute over the freight charges properly assessable on eight carload shipments of imported bulk wheat which were moved by rail from various points in Canada to Petaluma, California, where they were delivered to Poultry Producers of Central California. The specific issue involved is whether the inspections and reconsignments in transit exceeded the number allowed under

Plaintiff's Exhibit No. 1—(Continued)

the governing Great Northern Railway Company Rules Tariff No. 1240-O, I.C.C. No. A-8071, effective October 20, 1942. The applicable provision in said tariff is Item No. 143, of which a photostatic copy appears in the Appendix.

3. Each of the eight shipments was made by a Canadian grain selling organization, which delivered the grain at a point in interior Canada to Canadian Pacific Railway Company, which operates a Canadian railroad system, and which, in turn, issued to the shipper a Uniform Canadian Order Bill of Lading. The shipper's copy of each such original Bill of Lading appears in the Appendix. Each one stated that the freight charges were to be prepaid by the shipper to Coutts, Alberta. Coutts is the point on the International Boundary between Canada and the United States where the Canadian Pacific Railway terminates and connects with the Great Northern Railway, a United States railroad system. That boundary interchange point, which Canadian Pacific Railway Company calls Coutts (in Alberta) is called Sweetgrass (in Montana) by Great Northern Railway Company. For purposes of this case Coutts and Sweetgrass are the same point. Freight charges to Sweetgrass (Coutts) were in fact prepaid by the Canadian shipper. Each shipment was consigned to the order of Commodity Credit Corporation, and the destination named in the bills of lading was, "Ogden, Utah, for inspection and diversion, notify Commodity Credit Cor-

Plaintiff's Exhibit No. 1—(Continued)

poration." The route designated in each of the original Canadian bills of lading was via Canadian Pacific Railway to Sweetgrass, thence via Great Northern Railway and connections beyond.

4. During the period of the eight shipments Commodity Credit Corporation, an instrumentality of the United States, was engaged in administering a special emergency wartime United States Government relief program to import and distribute certain vital agricultural commodities. In the course of this program Commodity Credit Corporation entered into a contract for the purchase of a large volume of Canadian grain to be delivered to the purchaser f.o.b. Canadian-United States boundary. The eight shipments in question were shipped under said purchase contract, pursuant to which they became subject to the order of Commodity Credit Corporation upon their entry into the United States at Sweetgrass, where title passed to Commodity Credit Corporation as purchaser. Before leaving Canada they received an inspection pursuant to instructions in the Canadian bill of lading and as required by Section 55 of the Canada Grain Act.

5. On April 12, 1944, Commodity Credit Corporation issued blanket instructions to Great Northern Railway Company to divert all grain arriving at Sweetgrass to Spokane, Washington. These instructions were conveyed by a letter dated April 12, 1944, and read in part as follows:

Plaintiff's Exhibit No. 1—(Continued)

“At this time we ask that you issue blanket instructions to divert to Spokane for inspection and diversion all cars moving from Canadian points through Sweetgrass which are now billed to Commodity Credit Corporation at Ogden for inspection and diversion.” A copy of said instructions appear in the Appendix.

6. Upon arrival at Spokane the shipments received an inspection pursuant to orders issued by Commodity Credit Corporation. Commodity Credit Corporation also ordered the shipments reconsigned on Great Northern straight bills of lading to Poultry Producers of Central California at Petaluma, California, a point on plaintiff's lines, Commodity Credit Corporation having received the original Canadian bills of lading, and having surrendered them to Great Northern Railway Company. A copy of the diversion order given at Spokane for each car appears in the Appendix. Great Northern Railway Company, receiving said orders, changed the billing on the cars so that they became billed to Poultry Producers of Central California, Petaluma, California, via the Great Northern Railway and connections. The cars duly arrived at Petaluma, a point on plaintiff's lines, and were delivered by plaintiff to Poultry Producers of Central California for unloading.

7. The history of the shipment in car L&N 10913 (referred to herein as the L&N car) is typical,

Plaintiff's Exhibit No. 1—(Continued)

being in all material respects similar to the history of the other seven shipments. The L&N car was shipped by Alberta Wheat Pool, Etzikom, Alberta, Canada, on April 11, 1944, to the order of Commodity Credit Corporation, Ogden, Utah, for inspection and diversion. Freight charges were prepaid by the shipper to Coutts (Sweetgrass), the balance of freight charges, i.e., the charges for transportation in the United States, to be collected from the Commodity Credit Corporation at Portland, Oregon. The shipper's memorandum copy of the original Canadian bill of lading for this shipment appears in the Appendix. Before reaching the International Boundary the car was stopped and inspected at Lethbridge, Canada, in order to comply with Section 55 of the Canada Grain Act. A copy of the inspection certificate for said inspection appears in the Appendix.

8. Pursuant to the routing provision in the original Canadian bill of lading, the L&N car was subsequently delivered by Canadian Pacific Railway Company at the Boundary Point, Sweetgrass (Coutts), to Great Northern Railway Company. Pursuant to Commodity Credit Corporation's blanket instructions of April 12, 1944, *supra*, par. 5, Great Northern Railway Company, receiving the car at Sweetgrass, changed its billing so that it then became billed to the order of Commodity Credit Corporation, Spokane, Washington, for inspection and diversion. A copy of the waybill showing this

Plaintiff's Exhibit No. 1—(Continued)

change appears in the Appendix. The car was accordingly moved on the Great Northern Railway to Spokane.

9. Upon arrival at Spokane the L&N car was inspected at a location known as "Hillyard." Commodity Credit Corporation transmitted to Great Northern Railway Company written instructions dated April 20, 1944 for reconsignment of the car to Poultry Producers of Central California at Petaluma upon a Great Northern uniform straight bill of lading. A copy of said instructions appears in the Appendix. Commodity Credit Corporation surrendered the original bill of lading to Great Northern Railway Company but it is not clear whether the latter issued a new bill of lading. However, it was not improper under these circumstances for Great Northern Railway Company to move the car according to instructions of Commodity Credit Corporation, even without issuing a new bill of lading, the absence of which would not affect the rates.

10. The L&N car was moved on the Great Northern Railway and connections from Spokane to Petaluma, where it was duly delivered to Poultry Producers of Central California for unloading.

11. Plaintiff as the delivering carrier submitted its original freight bill dated May 3, 1944 for freight charges accrued and unpaid on the shipment in the L&N car. Pursuant to instructions the bill was submitted to Commodity Credit Corporation at Portland, Oregon. The original freight bill appears in

Plaintiff's Exhibit No. 1—(Continued)

the Appendix. The charges were stated according to the following basis:

(a) Canadian Portion

15½¢ per cwt. for transportation in Canada on the Canadian Pacific Railway from the Canadian point of origin to the International Boundary at Sweetgrass (Coutts), plus a special charge of \$1.00 for inspection of the car at Lethbridge, Canada. This Canadian portion of the charges was calculated according to applicable tariffs of the Canadian Pacific Railway Company and was prepaid by the Canadian shipper.

(b) United States Portion

68¢ per cwt. from Sweetgrass to Petaluma for the transportation beyond Sweetgrass, i.e., from Sweetgrass to Petaluma via the Great Northern Railway and connections. This rate was provided in Pacific Freight Tariff Bureau Tariff No. 241-B, Agent J. P. Haynes' I.C.C. No. 1364 as applicable to shipments from various Montana points, including Sweetgrass, to Petaluma, via the actual routing of the car over the Great Northern Railway and connections through Spokane. This tariff was published by an agent for Great Northern Railway Company and named the 68¢ rate as applicable to shipments originating on the Great Northern Railway at Sweetgrass and also applicable in combination with Canadian rates for shipments from Canadian points received by the Great Northern Railway at Sweetgrass.

Plaintiff's Exhibit No. 1—(Continued)

(c) Net Total

The total charges for both the Canadian and the United States portions amounted to \$780.85 after allowing a credit of \$146.08 for the Canadian portion which had been prepaid. The original freight bill stated the net sum due as \$634.77.

12. This net total of \$634.77 was paid by Commodity Credit Corporation to plaintiff, and the original freight bill calculated as above was returned by plaintiff to Commodity Credit Corporation bearing the stamped notation, "Paid, May 22, 1944."

13. Subsequently, plaintiff presented to Commodity Credit Corporation a supplemental freight bill dated July 12, 1944 for additional charges amounting to \$208.44. This supplemental freight bill appears in the Appendix. The additional amount was obtained by recalculating the charges for transportation within the United States. Instead of using the original basis of the through rate of 68c from Sweetgrass to Petaluma, a higher basis was used consisting of a combination of (a) the Great Northern local tariff rate from Sweetgrass to Spokane (40c), plus (b) the local tariff rate from Spokane to Petaluma (50c). The additional charges thus computed have not been paid.

14. With respect to each of the remaining seven shipments, plaintiff submitted an original freight bill on the same basis as for the L&N car, in which the charges for transportation within the United States were calculated at the through 68c rate from

Plaintiff's Exhibit No. 1—(Continued)

Sweetgrass to Petaluma via Spokane as named in the Pacific Freight Tariff Bureau Rate Tariff No. 241-B. The charges thus computed were paid by Commodity Credit Corporation, and the original freight bills were stamped "Paid" and returned by plaintiff to Commodity Credit Corporation. Subsequently, plaintiff in each instance presented a supplemental freight bill in which the charges for transportation within the United States from Sweetgrass to Petaluma were calculated according to the sum of (a) the local 40c Great Northern Tariff rate from Sweetgrass to Spokane, plus (b) the local 50c rate from Spokane to Petaluma. The additional charges stated in the supplemental freight bills have not been paid.

15. The documents in the Appendix to this stipulation include the following documents pertaining to all of the cars:

(a) Bill of lading (Shipper's copy).

(b) Copies of Diversion Orders issued by Commodity Credit Corporation.

(c) Plaintiff's Original Freight Bill submitted to Commodity Credit Corporation and paid.

(d) Plaintiff's Supplemental Freight Bill and Agent's Record submitted to Commodity Credit Corporation and unpaid.

These documents show that some of the cars were subjected to a further change in routing while in transit, which was ordered by Agent Kirk acting for the Interstate Commerce Commission for the

Plaintiff's Exhibit No. 1—(Continued)

purpose of keeping wartime traffic moving in the Pacific Coast region. The Kirk orders and the changes in routing made thereunder did not alter the rates—in applying the tariffs to the eight shipments they should be ignored.

16. The rates used in calculating the original and supplemental freight bills were the tariff rates lawfully in effect at the time of shipment for transportation between (a) Sweetgrass and Petaluma via Spokane (68c), (b) Sweetgrass and Spokane (40c), and (c) Spokane and Petaluma (50c), respectively. The question presented is whether the shipments were entitled to the benefit of the through 68c rate from Sweetgrass to Petaluma. The answer to this question depends on whether the shipments received diversions, reconsignments, and inspections in excess of the number allowed in Item No. 143 of the Great Northern Railway Company Rules Tariff No. 1240-O, I.C.C. No. A-8071. A photostatic copy of the title page of said tariff and of page 17 containing Item No. 143 appears in the Appendix. Conformity with the provisions of Item No. 143 is required as a condition to obtaining the through 68c rate from Sweetgrass to Petaluma by Pacific Freight Tariff Bureau Tariff No. 241-B (*supra*, par. 11) at Item No. 350 therein.

17. Plaintiff contends that the inspection stop made in Canada on the Canadian Pacific Railway in order to comply with Section 55 of the Canada Grain Act must be included in reckoning the num-

Plaintiff's Exhibit No. 1—(Continued)

ber of inspections allowed under said Item No. 143. Under plaintiff's theory, since the shipments received one inspection in Canada and one diversion at Sweetgrass, they should bear the combination of the rates applicable to a shipment terminating at the next inspection stop, Spokane, and to a shipment originating there. The applicable rate for the movement within the United States would thus be the combination of (a) the tariff rate from Sweetgrass to Spokane (40c) plus (b) the tariff rate from Spokane to Petaluma (50c).

18. Defendants contend that the inspection stop in Canada should not be included in reckoning the number of inspections, diversions, and reconsignments permitted by Item No. 143 in the Great Northern Rules Tariff, on the ground that the Canadian inspections were made before the shipments became subject to said Great Northern Rules Tariff. Under this theory, in applying Item No. 143 defendants would be entitled to as many inspections, diversions and reconsignments as if the shipments had actually originated at Sweetgrass. If the cars had in fact been loaded at Sweetgrass the flat through 68c rate from Sweetgrass to Petaluma would have been applicable, since the only inspections, diversions, or reconsignments under Item No. 143 would have been the inspection at Spokane (Hillyard) and the reconsignment at Spokane.

19. If plaintiff's theory is correct, plaintiff is entitled to the principal sum claimed in the com-

Plaintiff's Exhibit No. 1—(Continued)

plaint, \$1,954.14. If defendants' theory is correct, plaintiff is not entitled to any relief.

20. The grain composing the eight shipments was all sold by Commodity Credit Corporation to Poultry Producers of Central California on a delivered basis at Petaluma, Commodity Credit Corporation to pay transportation on said shipments to Petaluma. If plaintiff is entitled to any additional freight charges from defendant Poultry Producers of Central California for such transportations to Petaluma, then defendant Poultry Producers of Central California is entitled to reimbursement therefor by defendant Commodity Credit Corporation. In no event is plaintiff entitled to recover the additional freight charges from more than one defendant.

Dated: February 15, 1949.

/s/ A. T. SUTER,

Attorneys for Plaintiff, Petaluma and Santa Rosa
Railroad Company.

FRANK J. HENNESSY,

U. S. Attorney, Attorney for Defendant Commodity Credit Corporation,

By /s/ C. ELMER COLLETT,

Asst. U. S. Attorney.

/s/ CARL R. SCHULZ,

Attorney for Defendant Poultry Producers of Central California.

[Endorsed]: Filed Feb. 16, 1949.

[Endorsed]: Filed U.S.C.C.A. Dec. 16, 1949.

PLAINTIFF'S EXHIBIT NO. 2

In the United States District Court for the Northern District of California, Southern Division

No. 28,025-R

PETALUMA AND SANTA ROSA RAILROAD COMPANY, a corporation,

Plaintiff,

vs.

COMMODITY CREDIT CORPORATION, a corporation, POULTRY PRODUCERS OF CENTRAL CALIFORNIA, a corporation, et al.,

Defendants.

SUPPLEMENTAL STIPULATION

I.

The parties hereto have agreed by stipulation dated February 15, 1949 that if plaintiff is entitled to additional freight charges from the defendant Poultry Producers of Central California the latter is entitled to reimbursement therefor by the defendant Commodity Credit Corporation. This supplemental stipulation is entered into between plaintiff Petaluma and Santa Rosa Railroad Company and defendant Commodity Credit Corporation.

II.

Prior to October 20, 1942 the applicable re-signing tariff provision provided that at least

Plaintiff's Exhibit No. 2—(Continued.)

three inspections and diversions were permitted on each carload shipment of wheat. Because of war-time conditions and the necessity of conserving cars and equipment tariff provision Item 143 of Section 2, Great Northern Railway Company Tariff 1240-O, was made effective October 20, 1942.

“(E) Item No. 143. Grain, Seeds, etc., Placed on Track for Inspection and Held for Disposition Orders.

“Not more than two inspections (or one inspection in addition to a diversion or reconsignment without inspection) en route and one inspection (or diversion or reconsignment) within the switching limits of the destination at which the car is unloaded will be permitted; Provided, that if, after car has received the two inspections (or one inspection and one diversion or reconsignment) en route authorized in this rule, it is subsequently inspected (or diverted or reconsigned) and reforwarded without unloading, it will be subject to the combination of tariff rates applicable on a shipment terminating at and on a shipment originating at the point at which such subsequent inspection (or diversion or reconsignment) is performed in effect on date of shipment from point of origin.

“In applying this rule, the number of stops for inspection (or diversion or reconsignments without inspection) shall be reckoned from the last point of loading of car or from the point at which it be-

Plaintiff's Exhibit No. 2—(Continued.)

comes subject to combination of rates as provided in this rule.

“(E) Expires six months after the termination of the present war.

“(The form of this publication is permitted by authority of the Interstate Commerce Commission permission No. 9014 of May 7, 1942.)”

This tariff provision restricted the number of inspections and diversions permitted on a carload shipment of wheat. At the time the latter tariff provision was made effective no shipments of wheat were being transported from Canadian points to the United States. Due to this fact the applicability of said tariff provision to shipments of wheat originating in Canada was not contemplated in the framing of this tariff rule.

III.

The said tariff rule quoted herein was amended to become effective on February 16, 1949 as indicated in the exhibit attached hereto. The amendment provided for the addition of the following phrase. “or the point where the car comes in possession of carriers within the United States.” The said exhibit attached hereto is Publication Announcement No. 154, dated November 12, 1948, and bears the statement, “The above mentioned change is for clarification purposes.”

Dated: February 15, 1949.

/s/ FRANK J. HENNESSY,
U. S. Attorney.

Plaintiff's Exhibit No. 2—(Continued.)

/s/ C. ELMER COLLETT,

Assistant U. S. Attorney, Attorneys for Defendant,
Commodity Credit Corporation.

/s/ A. T. SUTER,

Attorney for Plaintiff.

(Copy)

National Diversion and Reconsignment Committee
2048 Transportation Building
Chicago 5, Illinois

November 12, 1948.

Publication Announcement No. 154

(Supplement No. 5 to P.A. No. 119)

(Last Amendment to P.A. No. 119 is P.A. No 153)

Rules and Charges Governing Grain: Seeds (Field or Grass), Screenings from Grain, Unground, Containing Not More Than 5 per cent of Flaxseed, Soybeans, Hay, Straw, Corn Husks or Corn Shucks, and Pummies, Unground, Held for Inspection and Disposition Orders.

The National Diversion and Reconsignment Committee has approved the following change in the Rules and Charges governing Grain; Seeds (Field or Grass); Screenings from Grain, Unground, containing not more than 5 per cent of Flaxseed, Soybeans, Hay, Straw, Corn Husks or Corn Shucks,

Plaintiff's Exhibit No. 2—(Continued.)

and Pummies, unground, held for Inspection and Disposition Orders, applicable Within Official Classification, Southern Classification and Western Classification Territories, and all railroads operating in the territories named should revise their tariffs accordingly to take effect February 16, 1949, on statutory notice:

Substitute the following for the second paragraph of Rule 5, captioned "Number of Inspections Allowed";

In applying this rule, the number of stops for inspection (or diversion or reconsignment without inspection) shall be reckoned from the last point of loading of car, or the point where the car comes in possession of carriers within the United States, or from the point at which it becomes subject to combination of rates as provided in this rule.

(The foregoing conforms to record made at meeting of the National Diversion and Reconsignment Committee held September 22, 1948, Docket Advice No. NDR-1182, Topic No. 13.)

(The above mentioned change is for clarification purposes.)

E. V. HILL,
Acting Chairman.

File NDR-450

[Endorsed]: Filed U.S.C.C.A. Dec. 16, 1949.

Rates and charges published in this tariff are subject to the increases provided in Item X-148 successive issues thereof.

The operation of portions of this tariff referred to in Item No. 1 is suspended as provided in Item No. 1.

G. N. Ry. Cal. R. C. No. 75.
Cancels Cal. R. C. No. 63.
G. N. Ry. Minn. R. C. No. 940.
Cancels Minn. R. C. No. 853.
G. N. Ry. Mont. R. C. No. 652.
Cancels Mont. R. C. No. 581.
G. N. Ry. N. D. P. S. C. No. 231.
Cancels N. D. P. S. C. No. 212.

G. N. Ry. C. T. C. No. 2302.
Cancels C. T. C. No. 2208.
G. N. Ry. P. S. C. of Wis. No. 198.
Cancels P. S. C. of Wis. No. 175.
G. N. Ry. P. U. C. of I. No. 251.
Cancels P. U. C. of I. No. 242.
G. N. Ry. P. U. C. Ore. No. 643.
Cancels P. U. C. Ore. No. 611.

C.T.C. - Canadian Transport
G. N. Ry. P. U. C. of S. D. No. 279.
Cancels P. U. C. of S. D. No. 205.
G. N. Ry. W. D. P. S. No. 1451.
Cancels W. D. P. S. No. 1424.
G. N. Ry. I. C. C. No. A-8071.
Cancels I. C. C. No. A-7892.

G. N. Ry. G. F. O. No. 1240-O.
Cancels G. F. O. No. 1240-N.

7-16-44

Cancels 1240-N

GREAT NORTHERN RAILWAY COMPANY

— In Connection With —

FARMERS GRAIN AND SHIPPING COMPANY. (FX 2, No. 11.)
THE MIDLAND RAILWAY COMPANY OF MANITOBA. (FX 5, No. 1.)

LOCAL AND JOINT FREIGHT TARIFF

— Providing —

RULES AND CHARGES

— Governing —

Diversion or Reconsignment of Freight and Holding of Cars for Surrender of Bills of Lading or Written Orders, or Inspection at points on the above named lines.

OCT 6 1942

ISSUED SEPTEMBER 16, 1942.

EFFECTIVE OCTOBER 20, 1942.
(Except as otherwise provided herein.)

BURNHAM,
Night Traffic Manager,
Great Northern Railway Co.,
ST. PAUL, MINN.

B. S. MERRITT,
Western Traffic Manager,
Great Northern Railway Co.,
SEATTLE, WASH.

Issued by
W. D. O'BRIEN,
General Freight Agent,
Great Northern Railway Co.,
175 East Fourth Street,
ST. PAUL, MINN.

SECTION 2—Continued.

ES AND CHARGES GOVERNING GRAIN; SCREENINGS FROM GRAIN, UNGROUND, CONTAINING NOT MORE THAN 5 PER CENT OF FLAXSEED; SEEDS (FIELD OR GRASS); SOY (SOYA OR SOJA) BEANS; HAY; STRAW; CORN HUSKS OR CORN SHUCKS, AND CHUMMIES, UNGROUND; CARLOADS, STOPPED FOR INSPECTION AND DISPOSITION ORDERS INCIDENT THERETO; ALSO RULES AND CHARGES COVERING GRAIN OR SEEDS, CARLOADS, HELD OR STOPPED AT SAMPLING POINT.

Item No. 143. Grain, Seeds, etc., Placed on Track for Inspection and Held for Disposition

Not more than two inspections (or one inspection in addition to a diversion or reconsignment without inspection) en route and one inspection (or diversion or reconsignment) within the switching limits of the station at which the car is unloaded will be permitted; Provided, that if, after car has received the two inspections (or one inspection and one diversion or reconsignment) en route authorized in this rule, it is subsequently inspected (or diverted or reconsigned) and reforwarded without unloading, it will be subject to combination of tariff rates applicable on a shipment terminating at and on a shipment originating at the point at which such subsequent inspection (or diversion or reconsignment) is performed in effect on date of shipment from point of origin.

In applying this rule, the number of stops for inspection (or diversion or reconsignments without inspection) shall be reckoned from the last point of loading of car or from the point at which it becomes subject to combination of rates as provided in this rule.

Expires six months after the termination of the present war.

The form of this publication is permitted by authority of the Interstate Commerce Commission per Commission No. 9014 of May 7, 1942.)

Item No. 145. Cars billed to team tracks or industries.

Cars billed direct to public team tracks, or to elevators, mills of other industries, within the switching limits of the billed destination, and there inspected and delivery taken, will not be subject to the charges provided in Section 1.

Item No. 150. Disposition order after inspection.

The disposition order received after the inspection will be considered as being in lieu of the consignment instructions under which the cars arrived at inspection point.

In shipments Consigned "To Order," an order to divert or reconsign, or a disposition order, under such rules will not be accepted or become effective until the original bill of lading is surrendered for cancellation, endorsement or exchange, or in its absence satisfactory bond of indemnity executed in lieu thereof, or approved security given.

Item No. 155. Sampling.

Carload shipments of Grain or Seeds originating on the lines of this company or connections, and billed to Minneapolis, St. Paul, Duluth, Minn., or Superior, Wis., may be set out for carrier's convenience free of charge at any intermediate grain sampling station, established with the approval of state authorities, for the purpose of permitting the withdrawal of samples by State or Federal authorities.

Grain or Seeds billed by the shipper to a sampling station, or to Minneapolis, St. Paul, Duluth, Minn., Superior, Wis., or beyond, with a notation on bill of lading to "Hold for sampling and orders" at the sampling station, will be held at the designated point for the purpose indicated at a charge of \$4.40 per car (exceptions 1, 2 and 3), which charge is to cover switching from sampling track, to and from hold track for consignment or reforwarding the car to destination in same general direction.

NOTE A—Orders reading "Hold for Inspection" will be considered as the equivalent of "Hold for sampling and orders."

NOTE B—The charge of \$4.40 provided in Section 4 does not cover any subsequent service at final destination, with respect to which service, Sections 1, 2 and 3 apply. The charge provided in Section 1 does not apply at intermediate sampling stations.

EXCEPTION 1—No charge will be made on Grain or Seeds originating at the following points:

Badger, Minn.	Greenbush, Minn.	Roseau, Minn.	Warroad, Minn.
Coon, Minn.	Mandus, Minn.	Salol, Minn.	

EXCEPTION 2—From stations shown in Column A below to Minneapolis, Minnesota Transfer, or Duluth, Minn., and stations taking same rates, the charge of \$4.40 per car will apply, except that in no case shall the total transportation charge, including the hold charge, exceed the charges on a like shipment of Grain or Seeds from station shown opposite such station in Column B below without the stop charge.

Column A	Column B
Greenbush.....Minn.	} Badger.....Minn.
Strathcona....."	

(Item No. 155 continued on following page)

Applies only on traffic destined to Duluth, Minn., Superior, Wis., and stations taking same rates.

Applies only on Interstate Traffic.

Plaintiff's Exhibit No. 2—(Continued)

(Copy)

United States Department of Agriculture
Commodity Credit Corporation
304 Artisans Building
Portland 5, Oregon

April 12, 1944.

Great Northern Railway Company
American Bank Building
Portland, Oregon
Attention: Mr. Osborne

Gentlemen:

This will confirm our telephone conversation of April 11 in which we asked that you cancel our instructions of April 10 regarding stopping of all cars at Great Falls for inspection and diversion which were billed to Commodity Credit Corporation at Ogden for inspection and diversion.

At this time we ask that you issue blanket instructions to divert to Spokane for inspection and diversion all cars moving from Canadian points through Sweetgrass which are now billed to Commodity Credit Corporation at Ogden for inspection and diversion.

Very truly yours,

EARL C. COREY,

Regional Director.

By/s/ C. J. SEELY.

For use in connection with the Form of Order of Bill Lading approved by the Board of Transport Commissioners for Canada by General Order No. 61 of 19th July 1928.

CANADIAN PACIFIC RAILWAY COMPANY

SHIPPING ORDER

must be lightly filled in, in ink, in Indefinite Parcel, or in Carton, and retained by the Agent.

Shipper's No. _____

Agent's No. _____

subject to the conditions and tariffs in effect on the date of issue of this Shipping Order.

MEXIKOM

*alta apr 11
alta w/t Pool*

1944

described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned and as indicated below, which said Company agrees to carry to its usual place of delivery at said destination, if on its road, otherwise to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said goods over all or any portion of the route to destination, and as to each party at any time interested in all or any of said goods, that every service to be performed hereunder shall be subject to all the conditions, whether printed or written, herein contained (including conditions on back hereof) and which are agreed to by the shipper and accepted for himself and his assigns.

A remittance of the Original ORDER BILL of Lading properly indorsed shall be required before the delivery of the goods. Inspection of goods covered by this order will not be permitted unless provided for law or unless permission is indorsed on the original bill of lading or given in writing by the shipper.

The Rate of Freight from _____

is in Cents per 100 Lbs.

If Special

Class I	Class II	Class III	Class IV	Class V	Class VI	Class VII	Class VIII	Class IX	Class X	Class XI	Class XII	Class XIII	Class XIV	Class XV	Class XVI	Class XVII	Class XVIII	Class XIX	Class XX	

(Mail Address—Not for purpose of Delivery)

to ORDER OF Commodity Credit Corp.

for inspection

Origin and Destination

Province or State of

Utah

County of _____

Name

Origin

Province or State of

L + N

County of _____

Great Grass CN Route France U.P. Car Initial

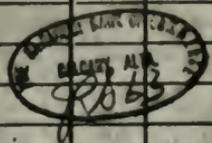
Car No. 10913

DESCRIPTION OF ARTICLES AND SPECIAL MARKS	Quantity (Subject to Correction)	Class or Rate	Check Columns
Do. Bulk Wheat <i>Warrior Seed</i>	<i>93600</i>		
Property of U.S. Government			
Not subject to Transportation Tax			
U.S.G. Exchange Purchase <i>596-A</i>			
Canadian Customs Entry Form to be supplied by <u>James Richardson & Sons Ltd, Calgary</u>			
Inspection Certificate required in duplicate by Alberta Wheat Pool Calgary			
<i>Can Pur 596a</i>			
Wheat Board Permit <i>776388</i>			
<i>wh 14 1374</i>			
<i>CCC-25-A</i>			
<i>7730721-02</i>			

If charges are to be prepaid, write or stamp here, "To Be Prepaid."
 Prepay freight to Covents, Balance of charges to be collected from C.C.C. Portland, Oregon
 Received \$ _____ to apply in payment of the charges on the property described hereon.

Agent or Cashier

Per _____
(The Signatures here acknowledge only the amount prepaid.)



Charges collected: _____
CANADIAN PACIFIC RAILWAY
 APR 11 1944
MEXIKOM

alta w/t Pool Shipper
AJ FITZ

Agent must retain and retain this Shipping Order and must sign the Original Bill of Lading.

Plaintiff's Exhibit No. 2—(Continued)
Dominion of Canada

No. 14903

The Department of Trade and Commerce

Board of Grain Commissioners for Canada
Western Grain Inspection Division

This Certifies that there was inspected
For Account of Alberta Wheat Pool

Car Initial: L & N.

Car Number: 10913.

Station Shipped From: Etzikom.

Date and Place Inspected: Lethbridge, Apr. 19,
1944.

Kind of Grain: Wheat.

Grade: Manitoba One (1) Northern.

Dockage: 1%.

Remarks

Duplicate

F. S. LUDLAM,
Chief Grain Inspector,
Winnipeg, Man.

W. K.,
Grain Inspector.

Plaintiff's Exhibit No. 2—(Continued)
Collect from C.C.C.

Divert on Straight Bill of Lading

To: Poultry Producers of Central Calif.

Destination: Petaluma, California

Route: GN to Chemult-SP-NWP-PSR

Do not Weigh: This car moving on Official Canadian Weight. Collect from C.C.C.

War Food Administration
Commodity Credit Corporation
304 Artisans Building
Portland 5, Oregon

April 20, 1944

Great Northern Railway Company
Portland, Oregon

Car of wheat L&N 10913 Wt. 93,600

Shipped from Etzikom, Alta. Date 4-11-44

Consigned to Order of Commodity Credit Corp.

Destination Spokane, Wn. (For Insp.&Div.)

Notify Same

At Spokane, Wn.

Route CP Sweet Grass GN Butte thence UP

Please divert as shown at top of this Diversion request.

Plaintiff's Exhibit No. 2—(Continued)

Confirming our telephone diversion of April 20,
1944 We are surrendering the original order B/L.
C/P 596-A

jh

/s/ EARL C. COREY
EARL C. COREY
Regional Director

[Stamped]: Received May 1, 1944. G. N. Ry.
Traffic Dept.

S B O

CANADIAN PACIFIC CO. 105 CANADIAN PACIFIC RAILWAY COMPANY
 1944
 HANDED FOR

105 CANADIAN PACIFIC RAILWAY COMPANY
 FREIGHT WAYBILL
 CARLOAD SHIPMENTS ONLY

CAR AT 16
 WEIGHT IN TONS
 GROSS 46

LENGTH OF CAR	MARSHED CAPACITY OF CAR	STAY
ORDERED	DELIVERED	
FURNISHED	FURNISHED	

AND NUMBER 10913
 C. L. TRANSFERRED TO OR L. C. L. LOADING NO.

DATE APRIL 18 1944
 WAYBILL NO.

STATION CALUMNA CALIFORNIA
 PROV. OR STATE Wash.

FROM STATION (7681) ST. LOUIS MO.

TO STATION Sweetwater
 PROV. OR STATE WYO.
 Authority H.S. 4-18-44

FULL NAME OF SHIPPER
 THE COMMODITY CREDIT CO.
 ALBERTA WHEAT POOL

IN EACH JUNCTION AND CARRIER IN ROUTE ORDER TO (INATION OF WAYBILL.)
 COUTTS ALTA
 COUTTS MONT
 DESTN. CHEMULT SP NWP PSR

DATE AND DATE, ORIGINAL CAR, TRANSFER FREIGHT AND ROUTING INFORMATION
 C. N. RAILWAY CO.
 INSPECTED AT HILLY
 State Grain

IND ADDRESS.
 COMMODITY CREDIT CORPN
 INSPN & DIVERSION
 OGDEN UTAH
 COMMODITY CREDIT CORPN
 OGDEN UTAH

WEIGHT
 112 JUN 1944
 RICHARDSON & SONS
 CALGARY

STATION AND ADDITIONAL ROUTING
 PRODUCERS OF CENTRAL CALIFORNIA

ALLOWED
 102

(REGARDING MILLING, WEIGHING, ETC.)
 TONS ENTRY SUPPLIED BY
 RICHARDSON & SONS CALGARY

APR 16 1944

KIND OF GRAIN	RATE AUTH'Y *	WEIGHT	RATE	FREIGHT
BULK WHEAT MORE OR LESS				
7980701/2 TO COUTTS		93600	152	527
25/A INSPN BEYOND		93395	68	1.00

APR 18 1944
 211 JUN 1944
 70000

SPN CERTS IN DUPE TO ALBERTA WHEAT POOL CAL
 PROPERTY OF US GOVT NOT SUBJECT TO TRANSPORTATION TAX

APR 18 1944
 40
 50

DO NOT WEIGH MOVING ON CANADIAN OFFICIAL WEIGHTS
 SEND FRT BILLS TO THE C C C PORTLAND FOR COLLECTION

APR 18 1944
 CALIF. AREA

CANADIAN PACIFIC RAILWAY
 APR 17 1944
 CALUMNA, CALIF.

APR 18 1944
 PAS
 CALUMNA, CALIF.

18427



RECEIVED DEPT. OF CENTRAL CONTRACTS

APR 23 1944

G. N. RY. CO.



THE COMMERCIAL CREDIT

GREAT NORTHERN RY. CO.
APR 23 1944
PASSED
SENO, OREGON



Consignee PETALUMA, CALIF. Station MAY 3, 1944 19
PETALUMA, CALIF. Freight Bill No. 5498
 Destination PETALUMA, CALIF. Route CP COULT'S ALTA GN CHEMUIT SP NWP PSR
 (POINT OF ORIGIN TO DESTINATION)
 To **Petaluma and Santa Rosa Railroad Company, Dr.,** For Charges on Articles Transported:

WAYBILLED FROM	WAYBILL DATE AND NO.	FULL NAME OF SHIPPER	CAR INITIALS AND NO.
ETZIKOM, ALTA.	4 12 44 C-44	C.C. C.	L&N 10913
POINT AND DATE OF SHIPMENT	CONNECTING LINE REFERENCE	PREVIOUS WAYBILL REFERENCES	ORIGINAL CAR INITIALS AND NO.
		AGRMT. A-1780	
NUMBER OF PACKAGES, ARTICLES AND MARKS			
BULK WHEAT 1560 BUSHELS M/L	WEIGHT	RATE	FREIGHT
	93395	.15 1/2	TO SWEET
		.68	BYD
		.83 1/2	BYD
			779.85
			1.00
			780.85
			146.08
			TOTAL
SEALS 798070 1/2 CCC 25/A. INSPN CERTS IN DUP TO ALBERTA WHT POOL CO. CALGARY PROP US GOVT NOT SUBJ TO TRANSPN TAX. CUSTOMS ENTRY SUPPLIED BY JAS RICHARDSON & SONS CALGARY. G.M. RY CO. INSP. AT HULLYARD BY ST-GR. INSP. DO NOT WEIGH MOVING ON CANADIAN OFFICIAL WTS.		P.P. AT ORIGIN FOR COLLECTION 634.77	
LOCATION SEND BILLS TO THE CCC BOARD FOR COLLECT.		Warehouse <u>Petaluma</u> DIVERTED AT SPOKANE, GN RY CO. 4/20/44 J.A. ROBASSE, AGT. OFFICIAL INSP. NWP-RR CO., PETALUMA, Agent	
MAY 12 1944		Prepaid To Collect	
SUBJECT TO STORAGE OR DEMURRAGE CHARGES IN ACCORDANCE WITH PUBLISHED TARIFFS. THE ORIGINAL PAID FREIGHT BILL MUST BE SUBMITTED FOR REFUND AND MUST ACCOMPANY CLAIMS FOR OVERCHARGE, LOSS OR DAMAGE.		Cashier or Collector Make Checks Payable to the Company	

This Company appreciates suggestions from the public which may be helpful in improving its service. The management welcomes, in particular, reports of unsatisfactory service and courteous treatment received at the hands of our employees or the usefulness of the Company's organization to the public may be known. Manager, 65 Market Street, San Francisco, California.



Station, JULY 12 1944
Freight Bill No. 5498

PETALUMA CALIF

Consignee
POULTRY PRODUCERS OF C.C.C.

Destination
PETALUMA CALIF

Route CP GN SP NWP PSR (MAY 3 1944)
(POINT OF ORIGIN TO DESTINATION)
Petaluma and Santa Rosa Railroad Company, Dr., For Charges on Articles Transported:
FULL NAME OF SHIPPER CAR INITIALS AND NO.
C.C.C. L&N 10913

Waybilled from ETZIKOM ALTA
Waybill date and no. 4/12/44 C 44
Point and date of shipment connecting line reference previous waybill references originate car initials and no.

MARGIN FOR BINDING MAKE NO NOTATIONS ON THIS MARGIN

AS BILL NUMBER OF PACKAGES, ARTICLES AND MARKS	WEIGHT	RATE	FREIGHT	ADVANCES	CAR INITIALS AND NO.
CL BULK WHEAT	93395	83 1/2	1.00	INS DN	634.77
1560 BU			779.85		
			780.85		780.85
AS CORRECTED	93395	15 1/2			
DC DC		40			
		50			
		105 1/2			
(ON INSPECTION AT SPOKANE SWEETGRASS			985.32		
SPOKANE COMEN CAR ORIGINALLY BILLED			1.00		
AT OGDEN)			2.97		
			989.29		
					843.21

Date Notified

ORIGINAL DESTINATION - OGDEN
AUTH - H.S. 4/18/44 DIVERTED AT SPOKANE AFTER INSP TO PETALUMA
AUTH GAG - DV 2/22/49
References to Collections, etc.
OF AH - DIVERTED AT SWEETGRASS TO SPOKANE

Total _____
Prepaid _____
To Collect _____

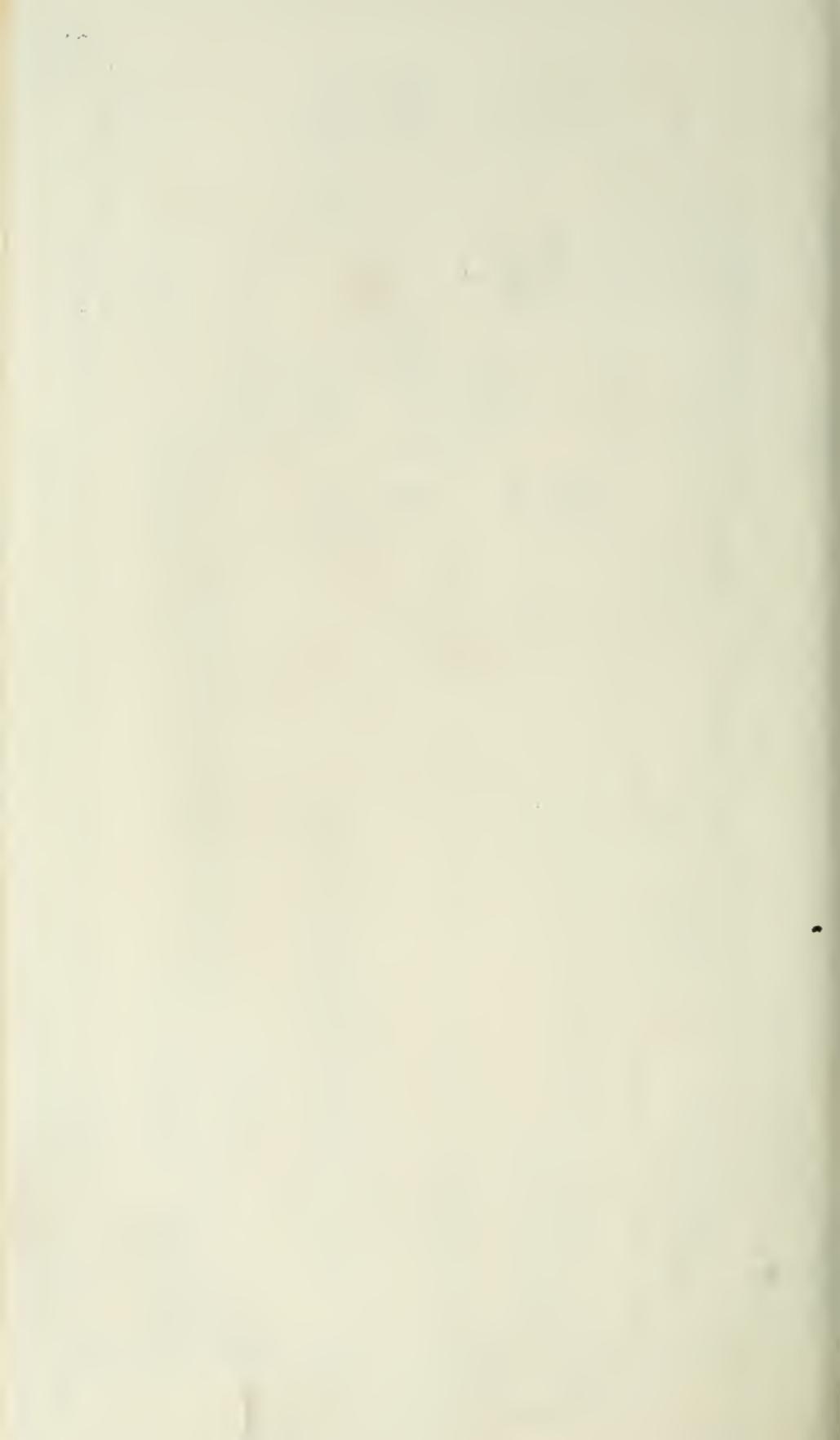
Main Checks Payable to the Company

SUBJECT TO STORAGE OR DEMURRAGE CHARGES IN ACCORDANCE WITH PUBLISHED TARIFFS.

YU-PSR-151

[Endorsed]: Filed U.S.C.C.A. Dec. 16, 1949.

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[Title of Court and Cause.]

CERTIFICATE OF CLERK TO RECORD
ON APPEAL

I, C. W. Calbreath, Clerk of the District Court of the United States for the Northern District of California, do hereby certify that the foregoing documents and exhibits, listed below, are the originals filed in this Court, in the above-entitled case, and that they constitute the Record on Appeal herein, as designated by the Appellant, to wit:

Certificate of Clerk of Municipal Court on Removal Contains: Copies of

Complaint for Freight Charges

Petition for Removal of Cause to United States
District Court

Bond for Removal

Notice of Petition and Bond for Removal

Petition for Removal of Cause to United States
District Court

Bond for Removal

Order for Removal

Answer of Commodity Credit Corporation

Answer to Complaint and Cross-Claim

Opinion

Proposed Amendments to Findings of Fact and
Conclusions of Law Lodged by Plaintiffs

Findings of Fact and Conclusions of Law

Judgment

Notice of Motion for New Trial

Order Denying Motion for New Trial

Notice of Appeal

Defendant's Designation of Contents of Record
on Appeal.

Plaintiff's Exhibits Nos. 1, 2 and 3.

In Witness Whereof, I have hereunto set my
hand and affixed the seal of said District Court this
14th day of December, A.D. 1949.

C. W. CALBREATH,
Clerk.

[Seal] By /s/ M. E. VAN BUREN,
Deputy Clerk.

[Endorsed]: No. 12427. United States Court of Appeals for the Ninth Circuit. Commodity Credit Corporation, Appellant, vs. Petaluma and Santa Rosa Railroad Company, a corporation, Appellee. Transcript of Record. Appeal from the United States District Court for the Northern District of California, Southern Division.

Filed December 14, 1949.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the United States Court of Appeals
For the Ninth Circuit

No. 12,427

COMMODITY CREDIT CORPORATION,
Appellant,

vs.

PETALUMA & SANTA ROSA RR. CO.,
Appellee.

DESIGNATION OF POINTS RELIED ON
BY APPELLANT

As Statement of Points required by Subdivision 6, Rule 19, appellant designates the following:

(1) The District Court erred in finding, concluding and holding that the provisions of the Great Northern Railway Rules Tariff in effect during April and May of 1944 were applicable to the shipments involved in this action prior to their crossing the Canadian border.

(2) The District Court erred in finding, concluding and holding that the number of inspections and/or diversions allowed each of the shipments must be computed from the point of origin in Canada.

(3) The District Court erred in finding, concluding and holding that the charges to be assessed for transportation on the shipments in the United States from Sweetgrass to Petaluma were properly

computed on the basis of a combination of rates from Sweetgrass, Montana, to Petaluma, California.

(4) The District Court erred in finding, concluding and holding that defendant, Commodity Credit Corporation, was lawfully obligated to pay unpaid freight charges on the shipments in the sum of \$1,954.14.

(5) The District Court erred in not finding, concluding and holding that the provisions of the Great Northern Railway Rules Tariff were not applicable to the shipments during their movement in Canada.

(6) The District Court erred in not finding, concluding and holding that the provisions of the Great Northern Railway Rules Tariff became applicable from the point where the shipments came into possession of the Great Northern Railway within the United States.

(7) The District Court erred in not finding, concluding and holding that the provisions of the Great Northern Railway Rules Tariff Item No. 143 were ambiguous and were meant to be applicable at "the point where the car came in possession of carriers within the United States".

(8) The District Court erred in not finding, concluding and holding that Sweetgrass, Montana, was a point at which the shipment had been subject to combination of rates as to its previous movement within the meaning of the Great Northern Railway Rules Tariff Item No. 143.

(9) The District Court erred in not finding, concluding and holding that the applicable rate was the flat rate from Sweetgrass, Montana, to Petaluma, California.

(10) The District Court erred in granting judgment to plaintiff.

(11) The District Court erred in not granting judgment to defendant.

Dated: December 28, 1949.

/s/ FRANK J. HENNESSY,
United States Attorney,

/s/ C. ELMER COLLETT,
Assistant U. S. Attorney,
Attorneys for Appellant.

Appellant designates the entire record to be printed, including plaintiff's Exhibits 1 and 2, and the following portions of Exhibit 3: The Great Northern Railway Company Rules and Charges, C.C.C. Blanket Diversion Order, and documents pertaining to Car L & N.

/s/ FRANK J. HENNESSY,
U. S. Attorney,

/s/ C. ELMER COLLETT,
Assistant U. S. Attorney.

[Endorsed]: Filed Dec. 29, 1949.